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Supreme Court, U.S.
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In The

Supreme Court for the United States

October Term, 1997

BRUCE BUCHBINDER,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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27pp

QUESTIONS PRESENTED

1. What is the standard that must be met by the United States Tax Court in order to fulfill a petitioner's right to the scope of review mandated by Congress pursuant to Title 5 United States Code Section 706, which requires, among other things, that the Tax Court hold unlawful and set aside agency action, findings, and conclusions found to be: arbitrary, and otherwise not in accordance with law; contrary to constitutional rights, powers, privileges, or immunities; in excess of statutory authority; not in observance of legal procedure; unsupported by substantial evidence; unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court (here Tax Court); and in making these determinations, the Tax Court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error, and whether the petitioner herein has been substantially deprived of these remedies?

2. Whether the arbitrary dismissal of a litigant's cause of action before the Courts, especially an action being brought by a Pro Se Litigant, is the harshest sanction that can be imposed by the Courts, and whether such a sanction can rise to the level of a denial of proper Due Process, and Right to meaningful access to the Courts?

3. Whether a Court imposed monetary sanction for an allegation of misconduct that never actually took place, coupled with a subsequent sanction of dismissal, would rise to the level of judicial usurpation, giving proprietorial necessity for this Court to invoke its appellate jurisdiction of review in order to curb further usurpations of this nature?

4. Whether an individual Pro Se Litigant has a Ninth Amendment right to refuse to pay a Court imposed sanction for an allegation of misconduct that never actually took place, barring being denied access to the courts?

5. Whether the Due Process Clause of the Fifth Amendment requires that a court order be subject to constitutional review in a civil proceeding when the order has but a "frivolous pretense to validity" because it was issued arbitrarily and capriciously for non-payment of sanctions for an allegation of misconduct that never actually took place?

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In The

Supreme Court for the United States

October Term, 1997

BARRISTER EQUIPMENT ASSOCIATES, SERIES III; BRUCE BUCHBINDER, A PARTNER OTHER THAN THE TAX MATTERS PARTNER,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PRELIMINARY STATEMENT

Petitioner Bruce Buchbinder, who is not formally trained in the complexities of legal practices, hereby petitions for a Writ of Certiorari, to the United States Court of Appeals for the Ninth Circuit, for the purpose that a supervisory opinion may issue from this Honorable Court, reviewing the actions of the United States Tax Court, and the United States Court of Appeals for

the Ninth Circuit.

The relief sought results from the subsequent ruling of the Tax Court and the Ninth Circuit Court of Appeals, which have effectively and substantially denied petitioner's constitutionally protected right to procedural and substantive Due Process.

Most importantly, in this case Buchbinder has been severely punished for an allegation of misconduct before the Ninth Circuit Court of Appeals, which allegation of misconduct never actually took place, and the punishment is so extreme that Buchbinder has been substantially denied access to meaningful judicial review of his case.

The Petitioner, in appearing pro se, relies on *Haines v. Kerner* (1972), 404 U.S. 519, *Price v. Johnson* (1948), 344 U.S. 266, plus many others, in that "pro se," "pro per" litigants are not held to the same standards as attorneys, appearing on 'appeal' in this Court.

OPINIONS BELOW

The Order of the Court of Appeals for the Ninth Circuit has been reported. It is copied and attached to the appendix hereto, APP. A, *infra.* The Order of Dismissal of the United States Tax Court has been reported. It is copied and attached to the appendix hereto, APP. B, *infra.*

JURISDICTION

The Ninth Circuit Court of Appeals had jurisdiction pursuant to Title 26 U.S.C. § 7483. The Tax Court had jurisdiction pursuant to Title 26 U.S.C. § 6213.

On or about January 11, 1996, the Director of the Holtsville, New York IRS Service Center, issued to Bruce Buchbinder a Notice of Final Partnership Administrative Adjustment (Notice of FPAA) for the year 1982. Buchbinder filed a timely petition in the United States Tax Court on May 29, 1996. On July 18, 1996, the Commissioner filed a Motion to Dismiss for Lack of Jurisdiction. In response, Buchbinder filed an Opposition to Motion to Dismiss on August 13, 1996. On September 16, 1996, the Tax Court ordered Respondent to file a Response to Petitioner's Opposition to Motion to Dismiss. Respondent filed Respondent's Response to Petitioner's Opposition to Motion to Dismiss, on December 13, 1996. On February 10, 1997, the Tax Court ordered Respondent's Motion to Dismiss to be calendared for hearing on March 17, 1997. On March 7, 1997, the judge rescheduled a second hearing, and in the interim during pendency of the instant case before the Tax Court, respondent levied petitioner's bank account and unlawfully withdrew money from said account. On March 21, 1997, Buchbinder filed a Formal Notification to the Court of Unlawful Action by Respondent, notifying the Tax Court of said unlawful levy.

After the hearing in Tax Court on March 27, 1997, petitioner filed a Motion for Judicial Determination on Issues Raised by Petitioner at Hearing held on March 27, 1997; and for Court to Reconsider its Granting of Respondent's Motion to Dismiss.

However, the Tax Court would not reconsider its determination and dismissed the instant case for lack of jurisdiction on the grounds that the Notice of FPAA was invalid, and treated the issue of the unlawful levy as a vagueity. The Tax Court entered its Order of Dismissal on May 15, 1997.

Buchbinder timely filed a Notice of Appeal to the Ninth Circuit Court of Appeals on June 9, 1997. On September 11, 1997, Petitioner filed an informal Opening Brief. The

Commissioner by Motion, on October 7, 1997, argued for dismissal of Buchbinder's Appeal for failure of Buchbinder to pay sanctions from a previous appeal numbered CA 92-70114. On October 27, 1997, Petitioner filed Opposition to Appellee's Motion to Dismiss Appeal for Failure to Pay Rule 38 Sanctions.

The Order of the Ninth Circuit Court of Appeals dismissing the appeal was entered on November 20, 1997, with no further filings permitted.

Jurisdiction of this Court to review the judgment of the Ninth Circuit is invoked under 28 U.S.C. §1254(1).

Authority to proceed in this Court is by authority of the people of the united States by their Constitution, Article III Section 2, Clauses 1 and 2, in which this Court has appellate jurisdiction.

TAX COURT RULES, STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

26 U.S.C. (Internal Revenue Code (I.R.C.)):
Subtitle F -- §§ 6001 -7871
Specifically:
Subtitle F;
§§ 6110 Public inspection of written determinations
6201, Assessment Authority
6211, Definition of a deficiency
6212, Notice of deficiency
6213, Restrictions applicable to deficiencies, Petition to Tax Court
6214, Determination by Tax Court
IRC Section 6110 provides, in pertinent part:

> "Except as otherwise provided in this section, the text of any written determination and any background file document relating to such determination shall be

open to the public inspection at such place as the Secretary may by regulations prescribe."

6211(a), Definition of a deficiency

In general. --If the Secretary determines that there is a deficiency in respect of any tax imposed by subtitle A or B or chapter 41, 42, 43, 44, or 45, he is authorized to send notice of such deficiency to the taxpayer by certified mail or registered mail.

6213(a), Restrictions applicable to deficiencies; Petition to Tax Court.

Time for filing petition and restriction on assessment. --Within 90 days ... after the notice of deficiency authorized in section 6212 is mailed, ... the taxpayer may file a petition with the Tax Court for a redetermination of the deficiency. Except as otherwise provided . . . no assessment of a deficiency in respect of any tax imposed by subtitle A, or B, chapter 41, 42, 43, 44, or 45 and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 90-day or 150-day period, as the case may be, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final.

6214, Determination by Tax Court

Title 5 United States Codes (Government organization and Employees)

§554 Adjudications

§556 Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision.

§702 Right of review

§703 Proper Venue for Court of Review

§706 Scope of review

SPECIFICALLY

§554(a) This section applies, according to the provisions thereof, in every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved--

(1) a matter subject to a subsequent trial of the law and the facts de novo in a court; [In pertinent part]

§702 **Right of review**

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof... [In pertinent part]

§703 **Form and venue of proceeding**

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgements or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction... [In pertinent part]

§706 **Scope of review**

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(2) hold unlawful and set aside agency action, findings, and conclusions found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege,

> or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (D) without observance of procedure required by law; (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.
>
> In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. [In pertinent part, Emphasis added] (Sept. 6, 1966, P.L. 89-554, §1, 80 Stat. 393).

Congressional Record, Proceedings and Debates of the 78th Congress First Session, Volume 89 Part 2, March 2, 1943, to April 5, 1943 (pages 1459 to 2940) at page 2580 where it is clearly stated:

> "The sixteenth amendment authorizes the taxation of income 'from whatever source derived'--thus taking in investment income-- 'without apportionment among the several states.' The Supreme Court has held that the sixteenth amendment did not extend the taxing power of the United States to new or excepted subjects but merely removed the necessity which might otherwise exist for an apportionment among the States of taxes laid on income whether it be derived from one source or another. So the amendment made it possible to bring investment income within the scope of a general income-tax law, but did not change the character of the tax. It is still fundamentally an excise or duty with respect to the privilege of carrying on any activity or owning any property which produces income.

> The income tax is, therefore, not a tax on income as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of the tax. (Emphasis added, Congressional Record 78th Congress, Volume 89--Part 2, page 2580).

Amendments to the United States Constitution
Amendment I of the United States Constitution provides in pertinent part:

> Congress shall make no law respecting . . . the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment V of the United States Constitution provides in pertinent part:

> No person shall.... be deprived of life, liberty, or property, without due process of law.

Amendment IX of the United States Constitution provides in pertinent part:

> The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by the people.

STATEMENT OF THE CASE

Buchbinder submitted a timely filed petition to the United States Tax Court in the instant case. In his petition Buchbinder set forth clear and concise separably enumerated statements of facts, and clear and concise separately enumerated assignments

of each and every error he alleged was committed by the Commissioner. The Commissioner contended that the instant case be dismissed on the grounds that it was a duplication of a previously filed petition; the Petitioner contending that it was not a duplication in that the Commissioner had with forethought took it upon himself to institute new action against Petitioner, and further that it involved a multiplicity of procedural errors on part of respondent, compounded by an unlawful levy of Petitioner's bank account during pendency of the case before U.S. Tax Court.

Ultimately the Tax Court dismissed the case and Buchbinder timely filed an appeal to the Ninth Circuit Court of Appeals on June 9, 1997. On September 11, 1997, Petitioner filed an informal Opening Brief. The appeal before the Ninth Circuit was arbitrarily and capriciously dismissed on Respondent's Motion to Dismiss for failure of Buchbinder to pay sanctions from a previous appeal numbered CA 92-70114; petitioner vigorously opposing respondent's Motion to Dismiss. The misunderstandings revolving around the issue of the sanctions leading to the dismissal of the instant case have been briefed extensively by Buchbinder in previous Supreme Court cases (Docket Nos. 94-620, 95-483, 95-778, 97-213). In these cases, Buchbinder explained that he had received previously issued Notices of Deficiency from the Commissioner of the Internal Revenue. In the first deficiency action the basis for the Notice of Deficiency related to the treatment of a forward contract and certain research and development expenditures which Buchbinder claimed on his 1981 federal income tax returns and which were disallowed by the IRS. Nothing about that particular case involved "**WAGES**". In a subsequent deficiency action, leading to this appeal, the basis for the Notice of FPAA related to an income tax deficiency for the year 1982.

In the first deficiency action Buchbinder challenged the validity of the Notice arguing that this was an unapportioned direct tax being imposed upon his personal property.

Buchbinder argued that the rule of apportionment for direct taxes applied to personal property as well as real property *Pollock v. Farmers' Loan Trust Co.*, 157 U.S. 429, 15 S.Ct. 673, aff. reh., 158 U.S. 601, 15 S.Ct. 912 (1895), and that the dividends received from invested capital was as much personal property as the invested capital *Pollock*, supra.

Buchbinder further argued that after the ratification of the Sixteenth Amendment it was held that nothing in the Amendment repudiated the holding in *Pollock*, that a tax on real or personal property was direct and must be applied by the rule of apportionment *Brushaber v. Union Pacific Railroad Company*, 240 U.S. 1, 36 S.Ct. 236 (1915). That the term income in the Sixteenth Amendment cannot be interpreted so as to modify or repeal the original Articles of the Constitution, Congress cannot conclude what is and what is not income, and it has now become the duty of the Courts to determine on a case by case basis whether the income tax is operating as a "DIRECT TYPE TAX" or whether it is operating as an "INDIRECT TYPE TAX," giving no regard to form, but giving due regard to truth and substance *Eisner v. Macomber*, 252 U.S. 189, 206, 40 S.Ct. 189 (1920).

The Tax Court in the first case arbitrarily deemed Buchbinder's arguments *tax-protester gibberish*, [1] without any finding that the Notice of Deficiency was valid, without jurisdictional review, without review of agency authority, or

[1] Here Buchbinder would point out that he had petitioned the Tax Court as petitioner, and had submitted his briefs to the Appeal Court as appellant. The term [Taxpayer] is a term of art, and without any clearly defined criteria as it relates to specific subject matter, is nothing more than a meaningless buzz word. Similarly the term [Tax-Protester] was used loosely and extremely by the Commissioner throughout this litigation, with no more intention than to create hyperbole intended to excite the senses of the readers.

review of the constitutional issues, and upheld the Commissioner's deficiency allegation.

Buchbinder timely appealed to the Ninth Circuit Court of Appeals for a de novo review, making the same argument as above. The Commissioner in its brief argued that Buchbinder was making tax-protester arguments that *"WAGES ARE NOT INCOME,"* however the Commissioner's attorney knew, or should have known, full well that wages were not even an issue in that case, nor was that proposition ever brought before the court.

For whatever unknown reason the Ninth Circuit adopted the Commissioner's argument, upheld the Tax Court decision, and sanctioned Buchbinder for making a frivolous argument, which Buchbinder never actually made. Buchbinder refused to pay the sanctions and instead petitioned this Court for a Writ of Certiorari, and ultimately for a Rehearing on the matter.

In the subsequent Notice of deficiency action, which has led to this appeal, the Commissioner issued the Notice of FPAA for additions to tax under IRC §46 (c)(8); and §465, §704 (d), §6653 (a)(1) & (2); and §6659, §6661, & §6621(c), but it involved the same fundamental tax issues as the first Notice of Deficiency. Buchbinder again timely petitioned the U.S. Tax Court raising the issues, and contending by motion that if the income tax is operating as an "INDIRECT TYPE TAX," as the Commissioner contends, then the Commissioner has never identified which activity is the Revenue Law taxable activity Buchbinder was involved in, nor has he ever identified which tax was due of the some 85+ internal revenue taxes authorized in the Internal Revenue Code, nor has he ever identified which revenue law of the 15 or so different revenue laws is applicable, upon which a "proper" and "valid" notice might have been based on to begin with. What he has identified relates to some function of the Bureau of Alcohol, Firearms and Tobacco. Buchbinder contending he had NEVER been involved in any BATF

activities, or in any activity relating to Titles 5, 7, 11, 19, 20, 25, 28, 31, 38, 42, 46, 48, 32 and 34, and their related taxable activities. Therefore, Buchbinder contending the Commissioner had no jurisdiction to begin with in this case, and was completely and totally outside his jurisdiction and area of authority. Therefore, because of this procedural error, Buchbinder contending personam jurisdiction had been invoked by false pretense.

Also, Buchbinder brought to the Tax Court's attention a multiplicity of other procedural errors committed by respondent in the instant case, including the issue of the unlawful levy; however, the court neglected to adequately address these issues and treated the unlawful levy as a vagueity.

Again, Buchbinder appealed to the Ninth Circuit Court of Appeals for a de novo review, and again the Commissioner by motion sought to have Buchbinder's appeal dismissed on the contention that Buchbinder had failed to pay the sanctions imposed by the Ninth Circuit in Buchbinder's first appeal.

On or about November 20, 1997, the U.S. Court of Appeals entered its Order arbitrarily dismissing Petitioner's cause of action on the pretext of a misapplied sanction. See Ninth Circuit Court Order, APP. A.

REASONS FOR GRANTING WRIT

Petitioner, in the instant case, had brought to the attention of the Tax Court, specifically worded issues for its review. These issues went directly to the jurisdiction of the taxing agency on the matters involved. The Tax Court denied any meaningful review or hearing on any of those issues on the pretext that the Notice was invalid, and thus deprived petitioner of any semblance of review as mandated by Title 5 U.S.C.

Section 706. Further the action of the Tax Court precludes any purposeful review by any appellate court because it does not allow a complete record to be made for the petitioner to take up. Title 28 of the United States Code states that the Appeal Courts are the designated courts of de novo review of all Tax Court issues at 28 U.S.C. § 2072.

This attitude toward the petitioner shown by the Tax Court is arbitrary and prejudicial. This attitude also goes against the Tax Court's duty as delegated to it through the Administrative Procedures Act (APA), specifically at Section 706 which mandates that Court's standards of review.

And with respect to the unlawful levy issue the Tax Court, although seemingly startled by such unlawful activity, ended up by treating this issue as a vagueity and refused to grant Petitioner's request for damages, clearly demonstrating the court's attitude toward petitioner as arbitrary and prejudicial.

Tax Court's duty imposed by the APA

In the APA at section 706, there are given the delegated guidelines for the standard of review of the Tax Court. The first paragraph of that statute states the reviewing court shall decide "all relevant questions of law, *interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.*" (Emphasis added). Then follow the mandated guidelines. Then it states that in making those determinations so authorized to do, the court shall "review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error."

If the Tax Court is refusing to take jurisdiction over interpreting constitutional and statutory provisions (jurisdiction being the prime threshold issue), it cannot then determine the meaning or applicability of the terms of an agency action in any

meaningful way in keeping with its mandated guidelines. While it is true that an earlier delegation of authority to the Tax Court could have arguably limited the scope of its review, since 1968 the Congress has decided that this court has an Article I status. See Title 26 U.S.C. Section 7441.

The Administrative Procedure Act, Title 5 of the United States Code is the only source of protection that the American citizen has against arbitrary governmental agency actions, and if the scope of review mandated by Title 5, Section 706 is circumvented by the lower courts and viewed as meaningless, the American citizens are then stripped bare of any protection and are reduced to victims rather than American citizens.

Petitioner left without remedy

Therefore, for the reasons stated above, the petitioner is left with no adequate remedy at law for his properly brought and specifically pled issues. It cannot be contemplated by Congress to leave its citizens without the ability to make an adequate record or to have then an adequate and meaningful review of that record. Nor could Congress have intended that those individuals not have a meaningful forum for their grievances when the government or its agents pursue those citizens with allegations of liabilities, all unfounded and unsubstantiated, and further compounded with a multiplicity of procedural errors including an unlawful levy during pendency of a properly docketed case, such as in the instant case.

The Tax Court below has erred grievously, and the Ninth Circuit Court has only exacerbated the error. To remember the words of *Boyd v. United States*, 116 U.S. 616 635 (1886):

> It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be Obsta Principiis

Invoking Obsta Principiis, this Court must exercise its supervisory powers to resolve far reaching dilemmas in judicial proceedings

There is a far-reaching dilemma that must be resolved in the instant case. The question asks: does the mishandling of the instant case by the Tax Court and the arbitrary dismissal of petitioner's cause of action before the Ninth Circuit Court of Appeals constitute a denial of proper Due Process and right to meaningful access to the courts?

Most consequential, the issue that bears upon the supervisory role of this High Court is the issue of the arbitrary dismissal of petitioner's cause of action before the Ninth Circuit Court of Appeals, and whether such action constitutes a denial of proper Due Process, and Right to meaningful access to the Courts.

The right of the individual citizens, which make up the public of the North American Continent, to effective and meaningful access to their courts, is a question of paramount and significant importance. The only means the average individual of the American Public has to check government excesses, and abuse of the awesome powers of its agencies, is to bring the cause before the Courts.

It is the customary practice in this American Society to settle the people's disputes with government agencies in the Courts, this case however is a classic example of how the doors to the very Courts who are sworn to protect the people are slowly being closed to the people.

An individual's constitutional right of access to the Courts has been upheld times innumerable. Perhaps the most comprehensive analysis of this issue can be found in the Annotation of *WHAT, IN VIEW OF SUPREME COURT, CONSTITUTES THE CONSTITUTIONAL RIGHT OF*

ACCESS TO THE COURTS, 52 L. Ed. 2d 779. In *Gilmore v. Lynch*, 319 F. Supp. 105 (DC Cal. 1970) Affd. 404 U.S. 15, 30 L. Ed. 2d 142, 92 S. Ct. 250, the District Court, in a decision affirmed without opinion by the Supreme Court, has defined access to the Courts as encompassing "all means a *defendant* or *petitioner* might require to get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him". Although most of the cases on this issue have involved state review procedures, the Supreme Court has indicated that the same principles are applicable to federal avenues of review. *See United States v. MacCollom*, 426 U.S. 317, 49 L. Ed. 2d 666, 96 S. Ct. 2086 (1976). Moreover, these cases involved prisoners, and for the most part were habeas corpus actions. Therefore, the common everyday Citizen's constitutional right of meaningful access to the Courts would seem to be a novel question and question of first impression.

CONCLUSION

For these various reasons, this petition for writ of certiorari should be granted. The Administrative Procedures Act Title 5 of the United States Codes is the only source of protection that the American Citizen has against arbitrary governmental agency actions, if the scope of review mandated by Title 5 Section 706 is viewed by the lower courts as meaningless the American Citizens are then stripped bare of any protection, and are reduced to victims rather than American Citizens.

The multiplicity of procedural errors on part of respondent in the instant case and the fact that respondent levied petitioner's bank account during pendency of the instant case before the U.S. Tax Court, resulted in grossly manifest injustices being wrought on petitioner and flies in the face of petitioner's constitutional rights, immunities and guarantees to Due Process.

Likewise, petitioner being denied access to courts of appeal on the pretext of misapplied sanctions renders due process

meaningless and impairs proper adjudication of issues brought before the court seeking redress of grievance.

Therefore, in consideration of the injury caused to petitioner by respondent in the instant case, petitioner is deserving of an award of claimed damages, and hereby claims damages, punitive damages and court costs from the Government in the amount of ten (10) times the face amount of the unlawful levy assessed against petitioner's bank account, said unlawful levy being in the face amount of $47,132.33 (as listed in the Notice of Levy), and double damages for a total of $944,406.60 due petitioner.

Respectfully submitted,

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(408) 279-4054
Petitioner in Pro Se

DATED: February 9, 1998

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BARRISTER EQUIPMENT ASSOCIATES, SERIES III; BRUCE BUCHBINDER, A partner other than the tax matters partner,	)	No. 97-70734
	)	IRS # 10855-96
Petitioners-Appellants,	)	
	)	ORDER
v.	)	
COMMISSIONER OF INTERNAL REVENUE,	)	(Filed Nov. 20, 1997)
Respondent-Appellee.	)	

Before: HUG, Chief Judge, PREGERSON and BEEZER, Circuit Judges

Respondent's motion to dismiss this appeal is granted. See Hymes v. United States, 993 F. 2d 701, 702 (9th Cir. 1993).

All pending motions are denied as moot.

mocal/11.17.97/as

APPENDIX B

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

BARRISTER EQUIPMENT ASSOCIATES, SERIES III, BRUCE BUCHBINDER, A PARTNER OTHER THAN THE TAX MATTERS PARTNER,	)	
Petitioner,	)	
v.	)	
	)	Docket No. 10855-96
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

ORDER OF DISMISSAL FOR LACK OF JURISDICTION

This case was recalled from the calendar for the Trial Session of the Court at San Fransisco, California on March 27, 1997, for hearing on respondent's Motion to Dismiss for Lack of Jurisdiction Pursuant to I.R.C. § 6226(b) (1), filed July 25, 1996. Counsel for respondent appeared and was heard. Petitioner Bruce Buchbinder apeared and orally moved the Court for damages against respondent. Upon due consideration, and for cause more fully appearing in the transcript of the proceedings, it is

ORDERED that petitioner's oral motion for damages is denied. It is further

ORDERED that respondent's motion to dismiss is granted in that this case is dismissed for lack of jurisdiction on the grounds that the notice of final partnership administrative adjustment, dated January 11, 1996, upon which this case is based is invalid, and that the government will not collect any tax liability based solely on that document.

/s/ Stephen J. Swift
Stephen J. Swift
Judge

Entered: May 15, 1997